IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 32934 of 2006(U)

AGAINST THE ORDER DATED 24/11/2006 IN EA 474/99 IN EP 793/94 IN OS.202/1987 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER: JUDGMENT DEBTOR:

M.D.STANLEY, AGED 58,
S/O.DEVASSY, KUZHIPARAMBIL, PONEKKARA,
ELAMAKKARA, EDAPPALLY-26.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: DECREE HOLDER:

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1. UNION BANK OF INDIA,
EDAPPALLY.

2. SEBASTIAN, S/O.RAPHEL,
THANNOKKOTTIL, KOONAMMAVU, KOTTUVALLY,
NORTH PARUR.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.32934 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioner is judgment debtor in O.S.202/1987 on the file of Principal Sub court, Ernakulam. In the execution petition petitioner remained absent. First respondent filed E.P.739/94 for realisation of the amount due under the decree. Property of petitioner was sold in auction. Petitioner filed E.A.1357/1997 to set aside the sale under Order XXI Rule 90 of Code of Civil Procedure. It was dismissed for default. Petitioner filed E.A.474/99 to restore that application. It was originally dismissed and thereafter restored by this court as per order in C.R.P.2490/99 and remanded to executing court. Again petitioner remained absent and it was dismissed. Application was filed to restore the same. As per Ext.P1 order learned Sub Judge allowed the application on terms. Petitioner was directed to pay cost of Rs.2,500/- which is challenged in this petition filed under Article 227 of Constitution of

India.

2. Arguments of learned counsel appearing for petitioner was that cost awarded is excessive and is against the judicial principles equity and conscious and therefore the cost is either to be set aside or modified.

3. On hearing learned counsel appearing for petitioner, luring the circumstances of the case, I cannot agree with the argument that the terms imposed by the executing court was either harsh or exorbitant. No interference is warranted in that order in exercise of the extra ordinary jurisdiction of the court under Article 227 of Constitution of India. Petitioner is granted ten days' time to pay the cost awarded by the executing court.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.